

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address DAVID CHASE ESQ (SBN 109172) LAW OFFICE OF DAVID CHASE 1900 EAST LA PALMA AVE, SUITE 207 ANAHEIM CA 92805 TEL: 714-858-0516 FAX: 714-772-2069 EMAIL dchaselaw@yahoo.com	FOR COURT USE ONLY
<input type="checkbox"/> Individual appearing without attorney <input checked="" type="checkbox"/> Attorney for: ROBERT REZA REZVANI	
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION	
In re: ROBERT REZA REZVANI	CASE NO.: 2-14-AP-01676TD CHAPTER: 7
VS JOHN LEBRUN	NOTICE OF MOTION FOR: DEBTOR'S MOTION TO DISMISS FIRST AMENDED ADVERSARY COMPLAINT
	(Specify name of Motion)
Debtor(s).	DATE: 12/09/2015 TIME: 10:00 am COURTROOM: PLACE: 255 E. Temple St. #1345 Los Angeles, CA 90012

1. TO (specify name): JOHN LEBRUN and HIS ATTORNEYS
2. NOTICE IS HEREBY GIVEN that on the following date and time and in the indicated courtroom, Movant in the above-captioned matter will move this court for an Order granting the relief sought as set forth in the Motion and accompanying supporting documents served and filed herewith. Said Motion is based upon the grounds set forth in the attached Motion and accompanying documents.
3. **Your rights may be affected.** You should read these papers carefully and discuss them with your attorney, if you have one. (If you do not have an attorney, you may wish to consult one.)

4. **Deadline for Opposition Papers:** This Motion is being heard on regular notice pursuant to LBR 9013-1. If you wish to oppose this Motion, you must file a written response with the court and serve a copy of it upon the Movant or Movant's attorney at the address set forth above no less than fourteen (14) days prior to the above hearing date. If you fail to file a written response to this Motion within such time period, the court may treat such failure as a waiver of your right to oppose the Motion and may grant the requested relief.
5. **Hearing Date Obtained Pursuant to Judge's Self-Calendaring Procedure:** The undersigned hereby verifies that the above hearing date and time were available for this type of Motion according to the judge's self-calendaring procedures.

Date: 10/27/2015

LAW OFFICE OF DAVID CHASE
Printed name of law firm

/s/ DAVID CHASE
Signature

DAVID CHASE
Printed name of attorney

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
1900 EAST LA PALMA AVE, SUITE 207
ANAHEIM CA 92805

A true and correct copy of the foregoing document entitled: **NOTICE OF MOTION FOR** (specify name of motion)
DEBTOR'S MOTION TO DISMISS FIRST AMENDED ADVERSARY COMPLAINT

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) 10/29/2015, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Zayena L. Brookins: brookinslawtax@gmail.com, graceparacletelawcenter

United States Trustee: ustpregion16.la.ecf@usdoj.gov

Heidi Kurtz: usmars@aol.com

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (date) 10/29/2015, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Hon. Thomas Donovan, 255 East Temple St., Los Angeles, CA 90017

Robert Reza Rezvani, 1546 Kiowa Crest Dr., Diamond Bar, CA 91765

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method

for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

10/29/2015 SARA LEON

Date Printed Name

Signature

This form is mandatory. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

1 DAVID CHASE, ESQ.
2 LAW OFFICE OF DAVID CHASE
3 1900 East La Palma, Ste. 207
4 Anaheim, CA 92805
Telephone (714) 772-2485
Facsimile (714) 772-2069

5 Attorney for Debtor
6

7
8 UNITED STATES BANKRUPTCY COURT
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10 CENTRAL DISTRICT OF CALIFORNIA

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In Re:)	Case No. 2:14-bk-23510TD
ROBERT REZA REZVANI)	Adv. Case No. 2:14-ap-01676TD
)		MOTION TO DISMISS AMENDED
)		COMPLAINT
)		<hr/>
JOHN LEBRUN)	
)		Plaintiff,
v.)	DATE: December 9, 2015
ROBERT REZA REZVANI)	TIME: 10:00 a.m.
)		PLACE: 255 E. Temple St. #1345
)		Los Angeles, CA 90012
)		<hr/>
Defendants,)	
)		

Defendant moves this Court, pursuant to the Federal Rules of Civil
Procedure, Rule 12 (b)(6) and the Federal Rule of Bankruptcy Procedure, Rule
7012(b)(6), to dismiss the present action because the Plaintiff's Amended
Complaint Pursuant To §523(A)(6) fails to state a claim against this Defendant
upon which relief can be granted, and the Plaintiff has failed to allege facts

1 sufficient to allow this Court to infer that this Defendant intended the injuries
2 suffered by Plaintiff.

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4 The defendant requests that the dismissal be with prejudice and without
5 leave to amend Plaintiff's pleading.

6
7 DATED: October 29, 2015

/s/ David Chase
8 David R. Chase, Esq.
9 Attorney for Defendant

1 MEMORANDUM IN SUPPORT OF MOTION TO DISMISS
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5 I
6 SIGNIFICANT FACTS
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8

9 1. This is an action brought under 11 USC 523(a)(6). [Complaint par. 1 and
10 5]
11 2. On March 30, 2002 the Plaintiff was a back seat passenger in a dune
12 buggy driven by the Defendant. [Complaint par. 7]
13 3. The Defendant turned the dune buggy in a sudden manner. [Complaint
14 par. 16]
15 4. The dune buggy rolled over and the Plaintiff was injured. [Complaint par.
16 17 and 18]
17 5. Plaintiff's spine was fractured. [Complaint par. 26]
18 6. Plaintiff sued the Defendant in state court, and he obtained a default
19 judgment on January 25, 2004. [Complaint par. 23]
20 7. The Plaintiff does not allege that the Defendant intended the injuries
21 suffered by the Plaintiff. The Plaintiff only alleges that the "Defendant knew his
22 actions would probable cause some type of injury or damage. [Complaint par. 55
23 and 57]
24 8. An intentional act that lead to injury does not support a "plausible" claim
25 under §523(a)(6). A "willful injury" is a deliberate or intentional injury, not merely
a deliberate or intentional act that leads to injury. *Albarran v. New Form, Inc. (In
re Barboza)*, 545 F.3d 702, 706 (9th Cir. 2008) (citing Kawaauhau v. Geiger 523
U.S. 57 at 61).

1 II
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5 The Supreme Court holds that debts arising from recklessly or negligently
6 inflicted injuries do not fall within the compass of § 523(a)(6).

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10 *Kawaauhau v. Geiger, 523 US 57, 64 (1998)*

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12 In *Kawaauhau v. Geiger, 523 U.S. 57, 61-62, 118 S.Ct. 974, 140 L.Ed.2d 90*
13 (1998), the Supreme Court held that § 523(a)(6) requires the actor to intend the
14 injury, not just the act that leads to the injury. Thus, recklessly or negligently
15 inflicted injuries are not excepted from discharge under § 523(a)(6). In
16 *Kawaauhau v. Geiger, 523 U.S. 57, 64, 118 S.Ct. 974, 140 L.Ed.2d 90 (1998),*

17
18 III
19

20 The Court Must Strictly Construe Plaintiffs Objections
21 To Debtors' Discharge or Dischargeability

22 Courts, in evaluating discharge objections, must strictly construe them in
23 favor of a debtor's fresh start. *Jett v. Sicroff* (In re Sicroff), 401 F.3d 1101, 1104 (9th
24 Cir. 2005) [citing *Industrie Aeronautiche v. Kasler (In re Kasler)*, 611 F.2d 308,
25 310 (9th Cir. 1979)]. Thus, Plaintiff bears the burden of proof here, and it is a high
one.

26
27 IV
28

29 11 U.S.C. that § 523(a)(6) requires the actor to intend the injury,
30 not just intend the act that leads to the injury.

31
32 The Plaintiff admits in his pleading that the Defendant did not intend the
33 injuries suffered by Plaintiff. The Plaintiff alleges that the "Defendant knew his
34 actions would probable cause some type of injury or damage. [Complaint par. 55
35 and 57]

1 11 U.S.C. that § 523(a)(6) requires the actor to intend the injury, not just
2 intend the act that leads to the injury. Section 523(a)(6) of the Bankruptcy Code
3 excepts from discharge any debt that results from "willful and malicious injury by
4 the debtor to another entity or to the property of another entity." 11 U.S.C. §
5 523(a)(6). In *Kawaauhau v. Geiger*, 523 U.S. 57, 61-62, 118 S.Ct. 974, 140 L.Ed.2d
6 90 (1998), the Supreme Court held that § 523(a)(6) requires the actor to intend the
7 injury, not just the act that leads to the injury. Thus, recklessly or negligently
8 inflicted injuries are not excepted from discharge under § 523(a)(6). In
9 *Kawaauhau v. Geiger*, 523 U.S. 57, 64, 118 S.Ct. 974, 140 L.Ed.2d 90 (1998),

10 A "willful injury" is a deliberate or intentional injury, not merely a deliberate
11 or intentional act that leads to injury. *Albarran v. New Form, Inc. (In re*
12 *Barboza*

13 *U.S.* at 61). The willful injury requirement of section 523(a)(6) is met when a
14 claimant shows either that the debtor had a subjective motive to inflict the injury
15 or that the debtor believed that injury was substantially certain to occur as a result
16 of his conduct. *Petralia v. Jercich (In re Jercich)*, 238 F.3d 1202, 1208 (9th Cir.
17 2001).

18 --
19 The "malicious injury" requirement in section 523(a)(6) is separate from the
20 "willful" requirement. *Carrillo v. Su (In re Su)*, 290 F.3d 1140, 1146 (9th Cir. 2002).
21 A malicious injury requires: (1) a wrongful act; (2) done intentionally; (3) which
22 necessarily causes injury; and (4) is done without just cause or excuse. Id. at 1146-
23 47 (citing *In re Jercich*, 238 F.3d at 1209). The Court must find both willful injury
24 and malicious injury to establish non-dischargeability under section 523(a)(6).
25 Barboza, 545 F.3d at 704.

1 Willfulness requires proof that the debtor deliberately or intentionally
2 injured the creditor or the creditor's property and that in doing so, the debtor
3 intended the consequences of his act, not just the act itself. *In re Su* 290 F.3d 1140,
4 1143. The debtor must act with a subjective motive to inflict injury or with a belief
5 that injury is substantially certain to result from the conduct. *Id.* at 1142. Injuries
6 resulting from recklessness are not sufficient to be considered willful injuries for
7 exception for discharge under § 523(a)(6). *Barboza*, 548 F.3d at 708, citing
8 *Kawaauhau v. Geiger*, 523 U.S. 57, 60-61, 118 S.Ct. 974, 140 L.Ed.2d 90 (1998).

9 V

10 THE PLAINTIFF HAS NOT ALLEGED A "PLAUSIBLE" CLAIM.
11 THE PLAINTIFF HAS NOT ALLEGED FACTS WHICH WOULD ALLOW
12 AN INFERENCE OF "INTENTIONAL HARM"

13 In ruling on a Rule 12(b) (6) motion, a court "accept[s] as true all facts
14 alleged in the complaint, and draw[s] all reasonable inferences in favor of the
15 plaintiff." *al-Kidd v. Ashcroft*, 580 F.3d 949, 956 (9th Cir. 2009), citing *Newcal*
16 *Indus., Inc. v. Ikon Office Solution*, 513 F.3d 1038, 1043 n.2 (9th Cir. 2008) . The
17 court assesses whether the complaint contains "sufficient factual matter, accepted
18 as true, to `state a claim to relief that is plausible on its face.'" *al-Kidd*, 580 F.3d at
19 949, citing *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949, (2009), in turn quoting *Bell*
20 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)

21 To avoid dismissal under Civil Rule 12(b)(6), a plaintiff must aver in the
22 complaint "sufficient factual matter, accepted as true, to `state a claim to relief that
23 is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173
24 L.Ed.2d 868 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570,
25 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). It is axiomatic that a claim cannot be

1 plausible when it has no legal basis. A dismissal under Civil Rule 12(b)(6) may be
2 based either on the lack of a cognizable legal theory or on the absence of sufficient
3 facts alleged under a cognizable legal theory. Johnson v. Riverside Healthcare Sys.,
4 534 F.3d 1116, 1121 (9th Cir.2008).

5
6 What facts has Plaintiff alleged which would allow an inference that
7 Defendant intended the harm suffered by the Plaintiff (a fractured neck)?
8 The answer is NONE.

9 In point of fact, the Plaintiff has alleged that the Defendant did not
10 know what type of injury the Plaintiff may suffer. [Complaint par. 55 and 57]

11 A. Failure to State a Claim

12 Under Federal Rule of Civil Procedure 8(a)(2), a complaint must contain a
13 “short and plain statement of the claim showing that the pleader is entitled to
14 relief.” The Supreme Court has explained the pleading requirements of Rule
15 8(a)(2) and the requirements for surviving a Rule 12(b)(6) motion to dismiss in
16 *Ashcroft v. Iqbal*, 556 U.S. 662, 677-80 (2009), *Erickson v. Pardus*, 551 U.S. 89,
17 93-94 (2007), and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 (2007). See
18 also *Moss v. U.S. Secret Service*, 572 F.3d 962, 968-69 (9th Cir. 2009).

19
20 The pleading standard of Rule 8 does not require “detailed factual
21 allegations.” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555); see also
22 *Erickson*, 551 U.S. at 93; *Moss*, 572 F.3d at 968. However, a complaint does not
23 meet the pleading standard if it contains merely “labels and conclusions” or “a
24 formulaic recitation of the elements of a cause of action.” *Iqbal*, 556 U.S. at 678
25 (quoting *Twombly*, 550 U.S. at 555). Instead, to comply with Rule 8(a)(2) and
survive a motion to dismiss under Rule 12(b)(6), “a complaint must contain

1 sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible
2 on its face.’” Id. (quoting *Twombly*, 550 U.S. at 570). “A claim has facial
3 plausibility when the plaintiff pleads factual content that allows the court to draw
4 the reasonable inference that the defendant is liable for the misconduct alleged.”
5 Id. (citing *Twombly*, 550 U.S. at 556). This plausibility standard is not a
6 probability requirement, but does ask for more than mere possibility; if a
7 complaint pleads facts “merely consistent with” a theory of liability, it falls short of
8 “the line between possibility and plausibility.” Id. (quoting *Twombly*, 550 U.S. at
9 557).

10 **CONCLUSION**

11 For the above reasons, Plaintiff's amended complaint should be dismissed
12 with prejudice, and without leave to amend.

14 DATE: October 29, 2015

15 /s/ David Chase
16 David R. Chase, Esq.
17 Attorney for Defendant

1 PROOF OF SERVICE

2 I am employed in the Country of Orange, State of California. I am over age of 18
3 and not a party to the within action; my business address is 1900 E La Palma Ave ,
4 Suite 207 Anaheim , CA 92805 . I served the **MOTION TO DISMISS**
5 **ADVERSARY** by placing a true copy there off enclosed in a sealed envelope
6 addressed as follows:

7 **VIA ECF:**

8 Zayena L. Brookins: brookinslawtax@gmail.com, graceparacletelawcenter
United States Trustee: ustpregion16.la.ecf@usdoj.gov
9 Heidi Kurtz: usmars@aol.com

10 **VIA US MAIL:**

11 Hon. Thomas Donovan
12 255 East Temple St.
Los Angeles, CA 90017

13 Robert Reza Rezvani
14 1546 Kiowa Crest Dr.
Diamond Bar, CA 91765

16 I caused such envelope to be deposited in the mail at Anaheim, California.
17 The envelope was mailed with postage there on fully prepaid.

18 Executed on October 29, 2015 at Anaheim, California.

19 I declare under penalty of perjury under the laws of the State of California
20 that the above is true and correct.

22 /S/ Sara Leon

23 Sara Leon